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LEGAL STATUS
OF
CANADIAN WOMEN

As Shown by Extracts from Dominion and
Provincial Laws Relating to

MARRIAGE, PROPERTY, DOWER, DIVORCE,
DESCENT OF LAND, FRANCHISE,
CRIME AND OTHER SUBJECTS

BY
HENRIETTA MUIR EDWARDS.

Published by the National Council of Women of Canada

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EDWARDS, H.M. *Preface.*

The question, "What is the law?" on this or that subject, was so frequently asked in our Council meetings when discussing various topics that relate to women, and so much delay was incurred in coming to any conclusion till the question could be answered, that I thought it advisable to prepare a brief synopsis of such laws as especially affect women.

In publishing these notes and extracts there is no idea of offering them as a legal guide; quite the contrary, for the more one studies law the more one realizes that a little law, like a little learning, is a dangerous thing to act upon. The aim of this pamphlet is to interest Canadian women in the laws that control their affairs, and to give them a general idea of their legal position.

To bring the price of the pamphlet within the reach of all, the extracts are of necessity of the most condensed character, but in most cases chapter and section from which the extract is taken are cited in order that anyone wishing further information can easily secure it at a public library. Permit me to say that a woman desiring to have her interests legally guarded should consult a qualified lawyer and not depend on any knowledge she may acquire through this pamphlet, or elsewhere, as "it depends" is truer in law than in anything else.

It will be seen by these extracts that the law differentiates between man and woman, sometimes in her favor, sometimes against her.

The extracts from the laws of each province have been submitted to distinguished lawyers in the respective provinces for supervision, in order that, if there were any mistakes in the condensation or interpretation, they might be corrected. While feeling deeply grateful for the kindness shown me by these eminent members of the legal profession and by the librarians of the different parliamentary libraries, I realize that it was as friends of the National Council and its workers that they gave so readily of their time and knowledge to aid me in a work undertaken for it, and that the thanks of the Council as well as my own are due them.

MACLEOD, ALBERTA, MARCH, 1908.

CHAPTER 'I.

Marriage.

As will be seen by the following extracts the marriage laws of the various Provinces differ in some important points. The legal age to marry without consent of parent or guardian varies, being eighteen years or twenty-one years. The age limit to a legal marriage is, in some Provinces, twelve years of age; in others fourteen years; in others sixteen years; while in some Provinces there is no age limit, children being married as young as seven years of age.

In some Provinces marriage can only be solemnized as a religious act; in other Provinces provisions are made for civil marriage.

Marriage revokes a will, except under special circumstances, in some Provinces and does not in others.

Marriage may be annulled by the Judicial Courts in some Provinces, while in others recourse must be had to the Senate of Canada, which is so costly a procedure that unless action is taken as a pauper, only the rich can avail themselves of this way of obtaining a divorce.

In some of the Provinces marriage affects the property of the contracting parties in various ways in different Provinces, while in others it has no effect on the property of either contracting party, except in case of intestacy.

In most of the Provinces marriage deprives a woman wage earner, or a woman of property, of municipal franchise.

An unmarried mother has the absolute control of her children. The rights of a married mother in her children during the life of the father are not recognized by law in most of the Provinces.

PRINCE EDWARD ISLAND.

Laws of P.E.I., Act 1832, Cap. 4.

No marriage legal without consent of both parties.

Must be before two or more adult witnesses.

Must be registered.

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There is no hour of the day when it is unlawful to solemnize marriage.

Both contracting parties must be twenty-one years of age. Minors may marry with consent of parents or guardians.

Qualified clergymen may marry minors without consent of parents or guardians if none exist, but only after careful inquiry.

NEW BRUNSWICK.

Marriage Act, 1900.

No. 9. Contracting parties must be of the age of eighteen years or have the consent of father or guardian.

No. 10. Must be solemnized in the presence of two or more credible witnesses who must sign the certificate, which is also signed by the clergyman and the contracting parties and transmitted by the person celebrating the marriage to the Registrar of the division within which the marriage took place.

No. 11. All marriage licenses issued from the office of the Provincial Secretary under the hand and seal of the Lieut.-Governor. The Provincial Secretary may issue such licenses in blank, marked with the number and date of issuing, but shall keep a register thereof showing the date and person to whom issued.

No person shall solemnize marriage unless duly registered as authorized to do so.

All Christian ministers and teachers duly ordained and having charge of a congregation in the province; all commissioners and staff officers of the Salvation Army, having charge of a division or branch of the Salvation Army; also Christian ministers and teachers formerly in charge of a congregation in the Province, duly ordained and in good standing with their denomination, if registered as having right to marry, may solemnize marriage by license or publication of banns. Publication of banns to be made once during divine service in the parish where either of the parties reside.

No civil form of marriage in New Brunswick.

No age limit as to the validity of a marriage provided there is consent of parent or guardian.

No time limit for the solemnization of marriage.

NOVA SCOTIA.

R. S. 1900, Chap. III.

No marriage legal without the consent of both parties. Must be solemnized before two or more witnesses. Must be registered, the register signed by two or more witnesses as well as by the officiating officer and the parties to the marriage.

With the exception of Salvation Army marriages, every marriage shall be solemnized by a minister or clergyman of a church or religious denomination, being a man and resident in Canada, recognized as duly ordained according to the rites and ceremonies of the church or denomination to which he belongs. In the case of Salvation Army marriages, the solemnization must be by license by a male commissioner or staff officer, who must be licensed to marry. One of the parties must make affidavit that he and the other party belong to the said society.

Contracting parties must be twenty-one years of age. If either party to an intended marriage (not being a widower or widow) is within the age of twenty-one years, the consent of the father of such party, if the father is living, or if the father is dead, the consent of the mother, if father and mother are dead the consent of guardian (if any has been appointed), shall be obtained before a license for such a marriage is issued.

Marriage licenses shall be under the hand and seal of the Lieut.-Governor, who may from time to time sign and seal licenses in blank, which shall then be furnished by the Provincial Secretary to the issuers. Every issuer shall give the Provincial Secretary a receipt for all blank licenses received by him, and shall account to the Provincial Secretary for all licenses so received.

Every person who, knowing the same to be false, shall send to any newspaper, publisher or other person for publication in any newspaper in Nova Scotia, a false statement of the marriage of any person, shall be liable to a penalty of one hundred dollars.

Fee for license, \$5.00.

Every person applying for a license shall make an affidavit stating all the facts necessary to enable the issuer to legally issue to him a license.

There is no age limit to parties contracting a marriage, nor time limit as to when it may be solemnized.

No person shall officiate in the solemnization of any marriage unless:—

- (a) Publication has been made by banns; or
- (b) A license has been obtained.

Publication by banns of any intended marriage may be made at any church or meeting house for divine worship, at the place in which one of the parties to the intended marriage resides, by the officiating minister or clergyman of any congregation at such place, in an audible voice during divine service. If there is more than one public service for divine worship in such church or meeting house on each Sunday, such publications shall be made at three several services held on two or more Sundays; or otherwise such publications may be made at the several services on two Sundays.

The clergyman solemnizing the marriage must give a duly filled-in marriage certificate to one of the parties to the marriage.

QUEBEC.

Civil Code.

No. 115. A man cannot contract marriage before the full age of fourteen years and a woman before the full age of twelve years.

Nos. 116, 148. There is no marriage where there is no consent. A marriage contracted without the free consent of both parties, or of one of them, can only be attacked by such parties themselves, or by the one whose consent was not free.

No. 129. All priests, rectors, ministers and other officers authorized by law to keep registers of acts of Civil Statutes, are competent to solemnize marriage.

Nos. 128, 156. Must be solemnized openly by a competent officer recognized by law, or it is open to contestation.

Nos. 57, 130. The marriage ceremony may only be performed after the publications of banns by the priest, minister or other officer in the church to which the parties belong, at morning service, and if there be no morning service, at evening service, on three Sundays or holidays, with reasonable intervals. If the parties belong to different churches these publications take place in each of such churches.

Nos. 63, 131. If the actual domicile of the parties to be married has not been established by a six months' residence at least, the publication must also be made at the place of their last domicile in Lower Canada.

No. 59. The marriage ceremony may, however, be performed without publication of banns if the parties have obtained and produced a dispensation or license from a competent authority.

No. 157. If the publications required were not made, or their omission supplied by means of a dispensation or license, or if the legal or usual intervals for the publications have not elapsed, the officer solemnizing the marriage under such circumstances is liable to a penalty not exceeding \$500.00.

No. 158. The officer solemnizing a marriage incurs a like penalty, if he contravenes the rules prescribed by law for solemnizing marriage.

No. 119. Children who have not reached the age of twenty-one years must obtain the consent of their father and mother before contracting marriage; in case of disagreement, the consent of the father suffices.

No. 174. A husband owes protection to his wife, a wife obedience to her husband.

No. 175. A wife is obliged to live with her husband and to follow him wherever he thinks fit to reside.

No. 163. A marriage, although declared null, produces civil effects, as well with regard to the husband and wife as with regard to the children, if contracted in good faith.

No. 164. If good faith exists on the part of one of the parties only, the marriage produces civil effects in favor of such party alone and in favor of the children of such marriage.

No. 156. Every marriage which has not been contracted openly, or solemnized before a competent officer, may be contested by the parties themselves and by all those who have an existing and actual interest, saving the right of the court to decide according to circumstances.

Nos. 166, 167. Children are bound to maintain their father and mother and other ascendants who are in want; also sons-in-law and daughters-in-law bound to maintain their father-in-law and mother-in-law, but the obligation ceases (1) when the mother-in-law contracts a second marriage (2) when the consort through whom the affinity exists and all of the issue of the marriage are dead.

No. 168. The obligations which result from these provisions are reciprocal.

Nos. 57, 58, 59, 59a. An officer, before solemnizing marriage, must be furnished with certificate of publication of banns signed by publishing officer, containing names, surnames, occupation of parties, whether they are of age or minors, names, surnames and domicile of parents or name of former, or license from a competent authority dispensing with certificate. A license issued by Provincial Secretary under hand and seal of Lieutenant-Governor is the competent authority for Protestant ministers, dispensing with the publication of banns.

No. 60. Publications one year old must be renewed.

No. 63. Marriage is solemnized at place of domicile of either party, otherwise parties must be identified.

No. 131. Domicile as regards marriage laws is acquired by six months' residence.

Nos. 53b, 64. Act signed by solemnizing officer and two witnesses. If solemnizing officer is unauthorized to keep register, must send copy of act with solemn declaration within thirty days to prothonotary of district.

No. 185. Marriage can only be dissolved by the natural death of one of the parties; while both live it is indissoluble.

No. 108. Presumption of death arising from absence: The husband or wife cannot marry without producing positive proof of death.

No. 153. A marriage contracted before the parties or either of them have attained the age required, can no longer be contested, (1) when six months have elapsed since the party or parties have attained the proper age, (2) when the wife, under that age, has conceived before the termination of the six months.

Fee for license, \$8.00, \$2.00 of which is retained by the issuer, the balance goes to the Protestant institution for superior education.

All marriage licenses for Protestant marriages shall be issued from the Department of the Provincial Treasurer, under the hand and seal of the Lieut.-Governor. The licenses are furnished by such persons as the Lieutenant-Governor in Council names for that purpose, to all persons requiring the same, who shall previously have given a bond, together with two sureties being householders.

ONTARIO.

Legal for man and woman to marry at the age of eighteen. No marriage legal without the consent of both parties. Must be solemnized before two or more adult witnesses, and two or more of such witnesses shall affix their names as witnesses to the record in the register prescribed. Must not be solemnized between the hours of 10 p.m. and 6 a.m., unless exceptional circumstances exist. Marriage revokes a will except in some cases. (See Chap. on Wills).

No person can solemnize marriage unless duly authorized to do so by license or publication of banns. Proclamation must be made at least one week previous to ceremony. The marriage must take place within three months from the date of the issue of the license or proclamation.

A certificate in the form given in Schedule B or C of the Marriage Act may, at the option of the applicant, be substituted for a marriage license and has the same legal effect as a license.

Extracts From the Marriage Act as Amended in 1902 and 1905.

Section 2. The following persons, being men and resident in Canada, may solemnize the ceremony of marriage between any two persons not under a legal disqualification to contract such marriage:

(1) The ministers and clergymen of every church and religious denomination, duly ordained or appointed according to the rites and ceremonies of the churches or denominations to which they respectively belong;

(2) Any elder, evangelist, or missionary for the time being, of any church or congregation of the religious people commonly called or known congregationally as "Congregations of God" or "of Christ," and individually as "Disciples of Christ," who from time to time is chosen by any such congregation for the solemnization of marriage;

(3) Any duly appointed commissioner or staff officer of the religious society called the Salvation Army, chosen or commissioned by the said society to solemnize marriages. 59 V. c. 39, s. 2.

Section 3. Every marriage duly solemnized according to the rites, usages and customs of the religious Society of Friends, commonly called Quakers, shall be valid.

Section 4.—Publication of Banns.

(2) Such intention (to intermarry) shall be proclaimed once openly, and in an audible voice, either in the church, chapel or meeting-house in which one of the parties has been in the habit of attending worship, or in some church, chapel, meeting-house or place of public worship of the congregation or religious community with which the minister or clergyman who performs the ceremony is connected, in the local municipality, parish, circuit or pastoral charge, where one of the parties has, for the space of fifteen days immediately preceding, had his or her usual place of abode; and where both parties do not live in the same local municipality, parish, circuit or pastoral charge, and the marriage is not authorized by license or certificate as aforesaid, a similar proclamation shall be made in the local municipality, parish, circuit or pastoral charge (being within Canada) where the other of the contracting parties has for the space of fifteen days immediately preceding had his or her usual place of abode; and where the proclamation last mentioned is required, such marriage shall not be celebrated until there is delivered to the person proposing to celebrate it a certificate (Schedule A) showing that such proclamation has been made.

(3) Every such proclamation shall be made on a Sunday, immediately before the service begins or immediately after it ends, or at some intermediate part of the service.

(4) The said certificate of proclamation of intention shall be signed by the clergyman, minister, clerk, secretary or other person who actually proclaimed the same, and shall show the official position of the person who signs it. 59 V. c. 39, s. 4.

Section 15. (1) Where, in case of an intended marriage, either of the parties thereto (not being a widower or widow) is under the age of eighteen years, the consent of the father of such party, if the father be living, or if the father be dead the consent of the mother, if living, or of a guardian if any has been duly appointed, shall be required before the license is issued.

(2) When such consent is necessary under the preceding subsection, no license or certificate shall be issued without the production of the consent, and the issuer or deputy-issuer shall satisfy himself of the genuineness of such consent by satisfactory proof in addition to the affidavit required of one of the parties.

(3) In the case of a party under the age of eighteen years (not being a widower or widow), if both the father and mother of such person are dead and there is no guardian of such party duly appointed, the issuer or deputy-issuer, on being satisfied as to the facts, may grant the license or certificate.

(4) In case the father or mother, though living, is not a resident of this Province, and is not in this Province at the time of the application for a license, and the party under the age of eighteen years is himself or herself a resident and has been such resident for the preceding twelve months, the issuer or deputy-issuer, on being satisfied by evidence of these facts, may grant the license or certificate. 59 V. c. 39, s. 15.

Section 16. (1) No license or certificate shall be issued to any party under the age of fourteen years, except where a marriage is shown to be necessary to prevent the illegitimacy of offspring and a certificate to this effect is given by a legally qualified medical practitioner known to the issuer, and except as aforesaid no person shall celebrate the marriage ceremony in any case in which either of the contracting parties is under the age of fourteen years, to the knowledge or information of such person. 60 V. c. 14, s. 68.

(2) If any minister, clergyman or other person shall celebrate the ceremony of marriage between two persons knowing or believing either of them to be an idiot or insane, the person so offending shall incur a penalty of \$500.00. 59 V. c. 39, s. 16 (2).

Section 17. (1) Before any license or certificate is granted by any issuer or deputy-issuer, one of the parties to the intended marriage shall personally make an affidavit which shall state:

(a) In what county or district it is intended that the marriage shall be solemnized, and in what town, village or place in the county or district, and

(b) That he or she believes there is no affinity, consanguinity, prior marriage or other lawful cause or legal impediment to bar or hinder the solemnization of the marriage;

(c) That one of the parties has for the space of fifteen days immediately preceding the issue of the license or certificate, had his or her usual place of abode within the county or judicial

district in which (for either municipal or judicial purposes), the local municipality in which the marriage is to be solemnized lies;

Or, (if the county or district in which it is intended that the marriage shall be solemnized is not that in which either of the parties has for the space of fifteen days immediately preceding the issue of the license or certificate, had his or her usual place of abode), that the reason of procuring the marriage to be solemnized in such place is not in order to evade due publicity or for any other improper purpose;

(d) The age of the deponent, and that the other contracting party is of the full age of eighteen years or the age of such other contracting party, if under the age of eighteen years, as the case may be;

(e) The condition in life of the parties, whether bachelor, widower, spinster or widow, according to the fact.

59 V. c. 39, s. 17. (1); 60 V. c. 14, s. 66.

(2) The affidavit shall further state the facts necessary to enable the issuer or deputy-issuer to judge whether or not the required consent has been duly given in the case of any party under the age of eighteen years, or whether or not such consent is necessary. 59 V. c. 39, s. 17 (2).

Section 18. Where a party (not being a widower or widow) is under the age of eighteen years, the written consent of the person whose consent to the marriage is required, shall be produced and annexed to the affidavit made under the preceding section and shall be verified by affidavit. 59 V. c. 39, s. 18.

Section 19. (2) The issuer or deputy-issuer before administering the oath to the applicant, shall see that the applicant is aware what degrees of affinity or consanguinity are a bar to the solemnization of marriage. 59 V. c. 39, s. 19.

Section 20. (1) In case the person having authority to issue the license or certificate has personal knowledge that the facts are not as section 15 of this Act requires, he shall not issue the license or certificate; and if he has any reason to believe or suspect that the facts are not as aforesaid, he shall, before issuing the license or certificate, require further evidence to his satisfaction in addition to the said affidavit.

(2) The issuer or deputy-issuer shall keep on record the affidavits or depositions satisfying him of the facts of which he is to be satisfied before issuing a license.

(3) No license or certificate shall be issued between the hours of 11 p.m. and 6 a.m. by any issuer or deputy-issuer unless he is satisfied from evidence adduced to him that the proposed marriage is legal and that exceptional circumstances exist which render the issue of the license or certificate advisable.

(4) Every issuer or deputy-issuer of marriage licenses shall immediately upon issuing a marriage license, fill up on a form the particulars contained in Schedule E appended to this Act, or such of them as he is then able to give, and the issuer shall forward the same forthwith to the Registrar-General; and every such issuer of marriage licenses shall, on making application

to the Provincial Secretary for a new supply of licenses, certify that a complete return of every license issued by him has been forwarded to the Registrar-General. 59 V. c. 39, s. 20.

Section 21. No fee shall be payable for any license or certificate except the sum of \$2.00, which the issuer of the license or certificate shall be entitled to retain for his own use; but the Lieutenant-Governor in Council may from time to time reduce the sum so payable. 59 V. c. 39, s. 21.

Section 22. It shall not be a valid objection to the legality of a marriage that the same was not solemnized in a consecrated church or chapel, or within any particular hours. 59 V. c. 39, s. 22.

Section 27. Printed copies of this Act shall be furnished in pamphlet form by the Clerks of the Peace, by mail if desired, postpaid, to any person applying therefor upon payment of ten cents for each copy.

MANITOBA.

The Marriage Act, 1906, of Manitoba is practically the same as that of Ontario with one or two exceptions. The fee for a marriage license is \$2.50 instead of \$2.00 as in Ontario.

In Ontario it is unlawful to issue a license to marry to anyone under fourteen years of age; in Manitoba it is unlawful to issue a license to marry to anyone under sixteen years of age.

Extract from Marriage Act of 1906:

Section 30. Every marriage heretofore or hereafter solemnized between persons not under a legal disqualification to contract such marriage, shall after two years from the time of the solemnization thereof, or upon the death of either of the parties before the expiry of such time, be deemed a valid marriage so far as respects the civil rights in this Province of the parties or their issue, and in respect of all matters within the jurisdiction of the Legislature of Manitoba, notwithstanding the clergyman, minister or other person who solemnized the marriage was not duly authorized to solemnize marriages, and notwithstanding any irregularity or insufficiency in the proclamation of intention to intermarry, or in the dispensation thereof, or in the issue of the license, or notwithstanding the entire absence of either; provided that the parties after such solemnization lived together and cohabited as man and wife, and that the validity of the marriage has not before such death or prior to the expiry of the said time been questioned in any suit or action; and provided further that nothing in this section shall make valid any marriage in case either of the parties thereto had or has previous to the death of the other and previous to the expiration of the said two years contracted matrimony according to law, and in such a case the validity of such marriage shall be determined as if this section had not been passed.

Printed copies of the Marriage Act must be furnished in pamphlet form by the Department of Agriculture and Immigration, by mail if desired, postpaid to any person upon application and the payment of ten cents.

ALBERTA AND SASKATCHEWAN.

Marriage must be solemnized before two or more credible witnesses besides the person performing the ceremony.

Contracting parties must be of the age of twenty-one years or have the consent of father if living, if dead that of mother, if mother dead that of guardian, except any female over the age of eighteen years living apart from her parents or guardian and earning her own living may be excused from obtaining the consents of such parent or guardian, and a statement of the fact constituting such excuse shall be set forth in the affidavit required.

License fee, \$3.00.

Before a license is granted by any issuer one of the parties to the intended marriage shall personally make an affidavit before him stating that there is no legal impediment to the marriage according to a printed schedule.

All clergymen and ministers duly ordained and appointed according to the various rites of the religious societies to which they belong, Commissioner and Staff Officers of the Salvation Army and Commissioners appointed for the purpose by the Lieut.-Governor in Council may solemnize or perform the ceremony of marriage.

All marriages must be registered and reported to the Registrar of the division in which the marriage is celebrated within one month from the date of the marriage.

No age limit for contracting parties to a valid marriage.

No time limit as to when the ceremony may be performed.

Any person unlawfully issuing a marriage license supplied from the Department, any issuer of marriage licenses granting a license without first having obtained the affidavit required by the ordinance, and any person solemnizing a marriage contrary to the provisions of the Marriage Ordinance is liable to a fine not exceeding \$100.00 and costs, upon conviction before two justices of the peace.

Marriage of Quakers or Doukhoborts:

Section 19. Nothing in this Ordinance shall be construed as in any way preventing the people called Quakers or Doukhoborts from celebrating marriage.

(2) Subject to the following provisions all such Quakers or Doukhoborts desirous of being married according to the rites and ceremonies of their own religion or creed shall not less than eight days before such marriage is solemnized, give notice in writing to be signed by one of the parties in form C of the schedule hereto to a marriage commissioner of their intention to have such rite or ceremony performed; and forthwith after the performance of the said rite or ceremony shall make and

sign a declaration in form F of the schedule hereto which said declaration shall be signed by both parties to the marriage so contracted in the presence of two witnesses who shall each severally attest such declaration by their signatures; and such declaration shall within eight days be delivered by one or other of the parties so married to the marriage commissioner to whom the aforesaid notice was given. 1901, c. 17.

Civil Marriage.

In the event of any parties objecting to or not being desirous of adopting marriage by a clergyman or minister then, and in that case, notice must be given by one of the parties in writing in a prescribed form to the marriage commissioner at least fourteen days before the intended marriage. Such marriage to be solemnized in the office of said commissioner in the presence of two credible witnesses and with open doors.

BRITISH COLUMBIA.

R. S. 1897, cap. 129.

No marriage legal without consent of both parties.

Must be solemnized before two or more witnesses.

Must be registered.

Ministers, clergymen of every religious denomination resident in Canada being males and duly authorized, and the Registrar appointed by the Lieut.-Governor in Council may celebrate marriage between any two persons neither of whom shall be under legal disqualification to contract such a marriage under publication of banns or license.

Commissioners and Staff Officers of the Salvation Army being males may celebrate marriage.

Civil marriage made by a Registrar duly appointed, must have notice given him fifteen days before celebration, stating their objection to being married by a clergyman.

Civil marriage must take place in Registrar's office with open doors and between the hours of 10 a.m. and 4 p.m. in the presence of two or more credible witnesses besides the Registrar. Registrar's fee, \$10.00.

All marriage ceremonies must be performed in a public manner with open doors save when otherwise permitted by license.

On payment of \$2.50 a caveat (warning) may be entered by any person with the Registrar against the issue of a certificate for the marriage of the person named in the caveat.

The Registrar on receipt of the caveat must examine if such caveat has grounds for obstructing the granting of a license.

A license to marry not valid after three months from date of issue.

Consent of parents and guardians necessary to the marriage of minors of either sex under twenty-one years of age.

No marriage may be solemnized if the man is under fourteen or the woman under twelve.

The consent of the mother not necessary to the marriage of a minor if the father has given his consent.

No clergyman or other person can solemnize marriage except by banns or license.

A DOMINION ACT RESPECTING OFFENCES RELATING TO THE LAW OF MARRIAGE.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows.

Section 1. Everyone who,—

(a) Without lawful authority, the proof of which shall lie on him, solemnizes or pretends to solemnize any marriage, or—

(b) Procures any person to solemnize any marriage, knowing that such person is not lawfully authorized to solemnize such marriage, or knowingly aids or abets such person in performing such ceremony,—

Is guilty of a misdemeanor, and liable to a fine or to two years' imprisonment or to both.

Section 2. (1) Every one who procures a feigned or pretended marriage between himself and any woman, and every one who knowingly aids and assists in procuring such feigned or pretended marriage, is guilty of a misdemeanor, and liable to two years' imprisonment.

(2) No person shall be convicted of any offence under this section upon the evidence of one witness, unless such witness is corroborated in some material particular by evidence implicating the accused.

(3) In every case arising under this section the defendant shall be a competent witness in his own behalf upon any charge or complaint against him.

(4) No prosecution under this section shall be commenced after the expiration of one year from the time when the offence was committed.

Section 3. Every one who, being lawfully authorized, knowingly and willingly solemnizes any marriage in violation of the laws of the province in which the marriage is solemnized, is guilty of a misdemeanor, and liable to a fine or to one year's imprisonment.

(2) No prosecution for any offence against this section shall be commenced except within two years after the offence is committed.

Degrees of affinity and consanguinity which under the statutes in that behalf, bar the lawful solemnization of marriage:

A man may not marry his

1. Grandmother.
2. Grandfather's wife.
3. Wife's grandmother.
4. Aunt.
5. Uncle's wife.
6. Wife's aunt.
7. Mother.
8. Step-mother.
9. Wife's mother.
10. Daughter.
11. Wife's daughter.
12. Son's wife.
13. Sister.
14. Granddaughter.
15. Grandson's wife.
16. Wife's granddaughter.
17. Niece.
18. Nephew's wife.
19. Wife's niece.*
20. Brother's wife.

A woman may not marry her

1. Grandfather.
2. Grandmother's husband.
3. Husband's grandfather.
4. Uncle.
5. Aunt's husband.*
6. Husband's uncle.
7. Father.
8. Step-father.
9. Husband's father.
10. Son.
11. Husband's son.
12. Daughter's husband.
13. Brother.
14. Grandson.
15. Granddaughter's husband.
16. Husband's grandson.
17. Nephew.
18. Niece's husband.
19. Husband's nephew.
20. Husband's brother.

The relationships set forth in this table include all such relationships whether by the whole or half blood, and whether legitimate or illegitimate.

*By Dominion Act 53 Vict., c. 36, sect. 1, it is enacted that "All laws prohibiting marriage between a man and the daughter of his deceased wife's sister where no law relating to consanguinity is violated are hereby repealed both as to past and future marriages."



CHAPTER II.

Property.

PRINCE EDWARD ISLAND.

Married Women's Property Act, 1896, Cap. 5.

A married woman can acquire real and personal estate as if she were unmarried. Sue and be sued in her own name and make herself liable on any contract in respect of and to the extent of her separate estate.

NEW BRUNSWICK.

N. W. Property Act. 28 Vic., c. 24.

A married woman is capable of acquiring, holding and disposing of any real and personal property, except property given her by her husband, as if she were unmarried. She can sue and be sued, can enter into contracts and render herself liable as far as her separate property is concerned.

But Sec. 4 states that nothing in the M. W. P. Act. shall be taken to prejudice the husband's tenancy or right to tenancy by the courtesy in any real estate of his wife.

NOVA SCOTIA.

R. S. 1900, Cap. 112.

Married women can acquire, hold, or dispose of her own property in the same way as if unmarried. Sec. 4.

Cannot carry on separate business without registration either by herself or husband, otherwise her husband becomes liable in contracts in respect to said business. Sec. 18, 19.

QUEBEC.

Civil Code of Lower Canada.

C. C. 324. An unmarried woman of the complete age of twenty-one years is capable of performing all civil acts and therefore as free in the acquisition and management of her property as a man.

A married woman is in the eye of the law as incapable as a minor, and her husband stands to her in the relation of a guardian, his consent being necessary to all that relates to the acquisition and disposal of her property.

C. C. 763. She cannot give or receive a gift *inter vivos* without the consent of her husband.

C. C. 177. She cannot contract a debt without his authorization, except in the administration of her property if she be separate as to property.

C. C. 176. A wife cannot appear in judicial proceedings without her husband's authorization.

C. C. 178. If a husband refuses to give authority to his wife to appear in judicial proceedings or to make a deed the judge may give the necessary authorization.

C. C. 179. A wife, however, who is a public trader may obligate herself for all that relates to her commerce and in so doing, when there is community of property, bind her husband. She cannot, however, become a public trader without the consent of her husband.

C. C. 180. If the husband be interdicted or absent the judge may authorize a wife for purposes of contracting or appearing in judicial proceedings.

In no other province in Canada is a married woman so well looked after in regard to property as in Quebec. The law treats her as a child but it also provides for her as it does for a child and guards her property interests in every way.

C. C. 1272. By the mere act of marriage, unless there has been an ante-nuptial contract to the contrary, all the moveables, which includes shares and interests in financial, commercial or manufacturing companies, but does not include money or precious stones, which the consorts possess on the day when the marriage is solemnized; (see C. C. 395) all the moveable property which they acquire during marriage, or which falls to them by succession or by gift if the donor or testator has not otherwise provided; all rents, revenues, arrears, interests from property belonging to the consorts at time of marriage or have accrued to them by any title whatever during marriage, and all the immoveables they acquire during marriage becomes a community of property which is equally owned by husband and wife. (C. N. 1401). One consort cannot to the prejudice of the other bequeath more than his share of the community. (C. C. 1293). The husband and wife both retaining as separate property the immoveables which they possess on the day of marriage or which fall to them by succession or equivalent title. (C. C. 1275). Also

all gifts and legacies made during the marriage by ascendants of one of the consorts either to the consort entitled to inherit from them or to the other consort. (C. C. 1276.)

C. C. 1276, par. 3. All gifts and legacies left to one or both of the consorts by other than ascendants fall into the community unless they have been expressly excluded.

This community of property is the common law of Quebec and exists in every case unless modified or excluded by marriage contract. It has its advantages and disadvantages for women. For a woman without private property and not likely to succeed to any, it is an advantage, as it gives her as a wife much more than the dower of the other Provinces, namely, the half as absolute owner of all her husband's moveables and of the immoveables acquired during marriage.

C. C. 1292, 1298. For a woman with private property or likely to succeed to such it may be a disadvantage, as the husband alone administers the property of the community and receives all revenues both of his own private property and that of his wife's, as well as the revenue of the community which includes the wife's earnings. He may not sell the immoveables of his wife's private property without her consent but the property of the community he may sell, alienate or hypothecate without the concurrence of his wife. He may even alone dispose of it either by gifts or otherwise *inter vivos* provided it is in favor of persons who are legally capable and without fraud. This leaves the wife, although owner of property, entirely dependant on her husband for private income.

This common law, however, can be modified or almost set aside by marriage contract or judicial proceedings.

C. C. 1264. All marriage contracts must be made in notarial form and before the solemnization of marriage.

Contracts of marriage made in certain localities for which an exception has been created by special law are exempted from the necessity of being in notarial form. In marriage contracts the parties may stipulate for (1) conventional community (2) exclusion of community (3) separation of property.

In conventional community the consorts may modify the legal community by all kinds of agreements not contrary to articles 1258 of Civil Code, which refers to covenants contrary to public order or good morals; and article 1259, which says consorts cannot derogate from the rights incident to the authority of the husband over the persons of the wife and children.

C. C. 1416, 1420. In exclusion of community the consorts stipulate that there shall be no community. This does not give the wife the right to administer her property: it may be agreed that the wife for her support and personal wants shall receive her revenues in whole or in part upon her own acquittances. A woman who agrees to this exclusion of community resigns what the common law gives her, namely, half of the community, which, although not much at the time of marriage may be a large fortune at the death of her husband. A woman should see that sufficient compensation is given her for her agreement to exclusion of community. This contract of exclusion of community does not nullify her dower rights.

C. C. 1318, 1422, 1423, 1424, 1431. Separation of property in contract of marriage gives the wife the entire administration of her property, moveables and immoveables and the free enjoyment of her revenues, only she cannot alienate her immoveable without her husband's consent, or on his refusal without judicial authority. She also becomes responsible to a certain degree for the expenses of marriage. This contract of separation of property nullifies her right to the half of whatever moveables or real estate may have accrued to her husband during marriage, but not necessarily her dower right.

C. C. 1310, 1311, 636. The community is dissolved by natural death, by separation from bed and board, by separation of property. Separation of property can only be obtained judicially when the interests of the wife are imperilled and the disordered state of the husband's affairs gives reason to fear that his property will not be sufficient to satisfy what the wife has a right to receive or get back. By the absence of one of the consorts. This dissolution may be only provisional and is made after obtaining authority to take possession of the half of the community. If there are no heirs of the absentee the present consort may obtain provisional possession of the other half.

C. C. 1315. The separation can be demanded only by the wife herself.

On the dissolution of the community an inventory must be made within three months after the death of the husband in a notarial form in the presence of the heirs of the husband.

A widow may renounce the community within forty days after the inventory has been made. This is an advantage if the burden on the community is greater than the benefit. The want of an inventory within the delays allowed by law causes the surviving consort to lose the enjoyment of the revenues of the minor children. C. C. 1330.

C. C. 1323. After the dissolution of the community by death and in the absence of any will to the contrary, the surviving consort has the enjoyment of the property of the community coming to the children from the deceased consort; such usufruct last as to each child until he is of the age of eighteen or until he is emancipated. (This enjoyment ceases in the event of a second marriage. C. C. 1325.

C. C. 1368. The mourning of the wife is chargeable to the heirs of her deceased husband.

C. C. 184. A wife can dispose of her own property by will without the authorization of her husband.

C. C. 1265. Consorts cannot confer benefits *inter vivos* upon each other, except a husband may, subject to certain restrictions, insure his life for his wife and children.

ONTARIO.

R. S. 1897, Cap 163.

Section 6. A married woman is capable of acquiring, holding and disposing of her own property as if she were feme sole.

Disputes between husband and wife as to title to, or possession of, property may be tried summarily without the necessity of an action being brought to a judge of the high court or county bench, at the option of the applicant.

If property be settled to the separate use of a married woman and the words, "without power of anticipation," or words of like import be added, she cannot anticipate her income, and the person who is responsible for the payment of that income cannot safely pay it to any person other than the married woman herself. This is a great safeguard against the solicitations of a needy husband but can also be used to defeat justice by a selfish and unscrupulous woman for her own benefit.

A widow has the usufruct of one-third of her husband's lands even if he has disposed of them during his lifetime, unless she has barred her dower in such lands, or he has mortgaged such lands before marriage.

If the husband dies intestate she has \$1,000.00 and half his estates under certain conditions.

Husband may make gifts of lands to his wife.

MANITOBA.

R. S. M. 1902, Cap. 106.

A married woman as free in the possession, acquisition and administration of her property as a man.

A married woman shall be subject to all such liabilities for the maintenance of her children as the father.

Husband and wife may make a valid conveyance of land to each other without the intervention of a trustee.

ALBERTA AND SASKATCHEWAN.

A married woman has all the rights and is subject to all the liabilities in regard to property, real and personal, as if unmarried.

Husband and wife may transfer land to each other without the intervention of a trustee.

Adultery and desertion by husband or wife debars from taking any part of the land of the deceased consort who dies intestate.

Extract From Alberta Land Titles Act, 1905.

Upon production to the registrar of a duplicate certificate of title issued to a female, accompanied with a statement in writing of her marriage subsequent to the issue thereof giving the date of such marriage, the place where solemnized and her husband's full name with his residence and occupation, verified by oath or affirmation and the production of a certificate of the marriage by the person who solemnized the same, and such further evidence as the registrar may require, or upon production to the registrar of such evidence as would be sufficient to establish the marriage in any court in the province and on application to the registrar to grant a new certificate of title, he shall file the same and at once cancel the existing certificate of title, as also the duplicate, and shall make a memorandum of each of the facts; and the registrar shall thereupon grant a new certificate of title to the applicant owner in her newly-acquired surname in which her husband's full name, residence and occupation shall be given and shall issue to her a duplicate certificate.

BRITISH COLUMBIA.

R. S. B. C. 1897, Cap. 130.

A married woman is as free as an unmarried woman to acquire, hold and dispose of property.

Can contract, sue and be sued as if unmarried.

A married woman can effect a policy of insurance upon her own or her husband's life for her separate use.

A married woman can protect her property from any person including her husband. A husband and wife are competent to give evidence against each other in this matter.

A married woman's ante-nuptial debts can only be collected from her separate estate unless there be a contract to the contrary.



CHAPTER III.

*Married Woman Earnings.***PRINCE EDWARD ISLAND.**

Married women entitled to her own earnings. III. Ed. vii, cap. 9.

NEW BRUNSWICK.

Married Woman's Property Act, 1895.

Right to her own earnings.

NOVA SCOTIA.

Has the right to her own earnings but cannot carry on business as separate without registration either by herself or husband, otherwise her husband becomes liable in contract in respect to said business. N. S. R. S. 1000, M. W. Property Act, chap. 112.

QUEBEC.

Has no right to her own earnings if married without a marriage contract without special permission from the court.

ONTARIO.

Has the right to her own earnings. R. S. O. 1897, cap. 163, sec. 6.

MANITOBA.

Has right to her earnings. R. S. M. M. W. Act 1891, cap. 95, sec. 14.

ALBERTA AND SASKATCHEWAN.

All wages, personal earnings, profits in any occupation or business carried on separate from her husband is under a married woman's absolute control. N. W. T. R. O. 1888, No. 54.

BRITISH COLUMBIA.

May secure a protection order for the earnings of her minor children under certain circumstances.

Right to her own earnings. R. S. of B. C. 1897, cap. 130, sec. 8.

CHAPTER IV.

Dower and Tenancy by Courtesy.

Requisites of Dower Are (1) Marriage (2) Seisin of Husband (3) Death of the Husband. Tenancy by Courtesy is the Right of the Husband to the Enjoyment for Life of the Estate of His Wife. Requisites (1) Marriage (2) Seisin of the Wife (3) Issue (4) Death of Wife.

PRINCE EDWARD ISLAND.

The widow has dower of one-third interest for life in all the lands that the husband owned during marriage, or of which he was the owner in fee simple, and one-third interest for life in all the lands of which he was the equitable owner at the time of his death. C. S. 1871, 23.

NEW BRUNSWICK.

Widow has the common law right of dower. N. B. C. S. 1877, cap. 73.

Married Woman's Property Act, 28 Vic., cap. 24, sec. 4, sub-sec. 4 expressly declares that nothing in the Act shall be taken to prejudice the husband's rights to tenancy by the courtesy in any real estate of the wife.

NOVA SCOTIA.

R. S. 1900, Chap. 114.

Wife has dower one-third interest in husband's real estate. May elect to take provision in husband's will or dower one-half to third interest in husband's real estate.

When husband dies beneficially entitled to interest in land the widow shall be entitled to dower.

When husband has been entitled to right of entry or action in land widow may sue for dower even though husband did not receive possession.

Wife entitled to dower in surplus proceeds of land sold under mortgage or judgment.

Husband has tenancy by courtesy in wife's estate.

QUEBEC.

Civil Code of Lower Canada.

1426. There are two kinds of dower, that of the wife and that of the children. These dowers are either legal or customary, or prefixed or conventional.

1427. Legal or customary dower is that which the law, independently of, any agreement, and as resulting from the mere act of marriage, establishes upon the property of the husband in favor of the wife as usufructuary, and of the children as owners. C.C. 1260.

1434. Customary dower consists in the usufruct (use) for the wife, and ownership for the children, of one-half of the immoveable which belong to the husband at the time of the marriage, and one-half of those which accrue to him during marriage from his father or mother or other ascendants. C. C. 954.

1436. The customary dower resulting from a second marriage, when there are children born of the first, consists in one-half of the immoveables not affected by the previous dower, which belong to the husband at the time of the second marriage or which accrue to him during such marriage from his father or mother or other ascendants. The rule is the same for all subsequent marriages which the husband may contract when there are children of previous marriages.

1428. Prefixed or conventional dower is that which the parties agreed upon by the contract of marriage.

1429. Conventional dower excludes customary.

1437. Conventional dower when there is no agreement to the contrary also consists in the usufruct for the wife and the ownership for the children of the portion of the moveables or immoveable property which constitutes it according to the contract. The parties may, however, modify this dower at will.

1440. Conventional dower is taken from the private property of the husband.

1438. Dower, whether customary or conventional, is a right of survivorship which opens with the death of the husband.

It may, however, be opened and become exigible "by separation of bed and board or by separation of property only, if such effects result from the terms of the contract of marriage. It may likewise be demanded in the case of the absence of the husband under the circumstances and conditions expressed in articles 100 and 110." C. C. 36, sec. 8, 208, 1322.

1463. The wife may be deprived of her dower by reason of adultery or desertion.

In either case an action must have been instituted by the husband and a subsequent reconciliation must not have taken place.

1464. A wife may also be declared to have forfeited her dower by reason of the abuse she has made of her enjoyment. (She is obliged to keep it in reasonable repair).

1454. The dowager, as long as she remains a widow, enjoys the dower, whether customary or conventional, upon giving the security of her oath to restore it, but if she remarry she is bound to give the same security as any other usufructuary. C.C. 464.

1443. Neither the alienation by the husband of immoveables subject to or charged with dower, or the charges or hypothecs which he may have imposed upon them, either with or without the consent of his wife, affect in any manner the rights of the latter or of the children unless she has expressly renounced in conformity with the following article:

1444. The wife who is of age may, however, renounce her right of dower whether customary or conventional upon such immoveables as her husband sells, alienates or hypothecates.

The renunciation may be made either in the act by which her husband sells, alienates or hypothecates the immoveable or by a separate and subsequent act.

1439. Children do not come into possession of dower until after the death of the mother.

1468. In order to be entitled to dower, the child is bound to return into the succession of his father all such benefits as he has received from him in marriage or otherwise, or to take less in the dower.

1467. A child cannot accept dower and also be an heir to his father.

Continuation of Community.

1323. After the dissolution of the community (of property) by death, and in the absence of any will to the contrary, the surviving consort has the enjoyment of the property of the community coming to the children from the deceased husband, such usufruct lasts as to each child until he is of the age of eighteen or emancipated.

2116. The right to legal customary dower cannot be preserved otherwise than by the registration of the marriage certificate with a description of the immoveables then subject to dower.

As regards to immoveables which may subsequently fall to the husband and become subject to customary dower, the right to dower upon such immoveables does not take effect until a declaration for that purpose has been registered setting forth the date of the marriage, the names of the consorts and the description of the immoveable, its liability for dower and how it has become subject to it.

1448. If the dower which is not yet opened be the conventional dower, whether it consists in an immoveable or in an hypothecary claim it is subject to the effect of the registry laws.

NOTE—A woman marrying a widower with children by a former wife should see that an inventory of her husband's free property is made and registered.

ONTARIO.

R. S. 1897, Dower Act.

A wife has an inchoate (begin) right of dower to all lands acquired or held by her husband during coverture notwithstanding that he may have disposed of them in his lifetime or by will.

If a wife bars her dower in a mortgage, it is not an absolute bar but only to a sufficient extent to give full effect to the rights of the mortgagee. If land sold under a mortgage containing bar of dower, dower is payable out of the surplus, the amount being one-third of the gross value of the land. This does not apply to marriages made before the act. Formerly a wife had to be examined before a judge apart from her husband before she could bar her dower, but it is not so now.

p. 839, 1633. By statute there is a dower even out of equitable estate, if the husband has not parted with the same in his lifetime and die beneficially entitled.

The widow may elect to take in distribution share in lieu of dower.

In living absent from her husband for five years a wife bars her dower in any land the husband may have sold or mortgaged during that time, the purchaser or mortgagee having no knowledge of the existence of a wife.

No action for dower can be brought but within ten years after the death of the husband of the dowress notwithstanding any disability, but if widow has, after the death of husband, actual possession of the land the period of ten years is to be computed from the time when the possession ceased.

The widow of a joint tenant has no dower in her husband's estate, for by the operation of the conveyance the whole estate vests in the survivor of the joint tenant.

If husband purchases an estate subject to a mortgage or mortgages his land and then marries, no dower attaches unless he dies beneficially entitled.

Tenancy by Courtesy.

It is a question, since the enactment of the Devolution of Estates Act, whether the effect of sections 3 to 9 of this act is not to abolish tenancy by the courtesy, giving the husband in lieu one-third if there is any issue or half if no issue, of real and personal estate if the wife dies intestate. Husband has the right to select under the different sections of the Act.

The Ontario legislature has by 62 Vic. cap. 9, sec. 11 recognized the estate by the courtesy as an existing estate, but if the view be correct that the said estate was abolished by previous legislation this recognition would have no effect. (A. H. Marsh, K.C., Toronto Bar).

MANITOBA.

There is no dower or tenancy by courtesy. R.S.M. 1902, cap. 48, sec. 19 and 20.

ALBERTA AND SASKATCHEWAN.

Dower and tenancy by courtesy abolished in 1887

BRITISH COLUMBIA.

R. S. 1897, Cap. 63.

Sec. 5. A widow is not entitled to dower in any lands which her husband disposed of absolutely in his lifetime or by his will. She is entitled to dower only in lands to which he, dying intestate, was beneficially entitled at his death.

Sec. 10. A bequest of land to her by her husband may, however, deprive her of dower in all other lands.

Sec. 11. The right to tenancy by courtesy still exists, but only if the wife dies intestate.

(Practically no dower or tenancy by courtesy).



CHAPTER V.

Compulsory Support of Married Woman by Husband and Protection Orders.

There is a provision in the Criminal Code relating to the provision by the husband which is in force in all the Provinces.

Section 210 and 215 makes the husband criminally responsible for omitting, without lawful excuse, to provide necessaries for his wife, if the death of the latter is caused, or if her life is endangered or health is or likely to be permanently injured by such omission.

PRINCE EDWARD ISLAND.

A Provincial law, 14 Vic., chap. 7, allows of seizure and sale of the husband's property to provide for the wife if he neglects to do so.

NEW BRUNSWICK.

Any woman living apart from her husband for reasons justified by law, may obtain an order for protection entitling her to the control of the earnings of her minor children. R. S. 1903, chap. 20, sec. 20.

NOVA SCOTIA.

R. S. 1900, Chap. 112.

Sec. 31. Any married woman,—

(a) Who has a decree of alimony, or any decree, judgment, or order in the nature of a decree or order for alimony, against her husband,

(b) Who lives apart from her husband, having been obliged to leave him for cruelty, or other causes which by law justifies her leaving him renders him liable for her support, or

(c) Whose husband is a lunatic, with or without lucid intervals, or

(d) Whose husband is undergoing sentence of imprisonment in a penitentiary, jail or other prison for an indictable offence, or

(e) Whose husband, from habitual drunkenness, profligacy, or other causes, neglects or refuses to provide for her support and that of his family, or

(f) Whose husband has never been in this province, may apply to a judge for an order for protection, entitling her to have and enjoy all the earnings of her infant children, and any acquisition therefrom, free from the debts or obligations of her husband, and from his control or disposition.

NOTE—Orders of no effect if not registered.

QUEBEC.

Non-support is a justifiable cause for obtaining separation from bed and board.

C.C. 213. Either of the parties thus separated, not having sufficient means of subsistence, may obtain judgment against the other for an alimentary pension which is fixed by the court, according to the conditions, means and other circumstances of the parties.

Imprisonment the punishment of non-support of wife and family.

Demand for support is not dependant on previous separation. That is when the wife is deserted by her husband.

ONTARIO.

A deserted wife is now able to procure through a Stipendary or Police-Magistrate, a weekly allowance, not exceeding five dollars per week in addition to the right to sue for alimony.

Imprisonment the penalty for non-support.

MANITOBA.

Revised Statutes of Manitoba, 1902, Chap. 107.

Sec. 2. Married woman may apply to County Court Judge for an order, in case of husband's conviction for persistent cruelty, etc., within the judicial district in which any such conviction has taken place, or in which the cause of complaint shall have wholly or partially arisen, for an order or orders under this act. 63 and 64 V. c. 28, s. 2.

Sec. 3. The court to which any application under this act is made may make an order or orders containing all or any of the provisions following, viz:

(a) Cohabitation (b) Custody of children (c) Weekly or monthly payments (d) Costs (e) Forbidding interference, a provision forbidding the husband to enter upon any premises where

the applicant may be living apart from her husband, and in case such provision is made in any such order it shall not thereafter be lawful for the husband to enter upon any such premises. 63 and 64 V. c. 28, s. 3.

Sec. 8. Every man shall be legally liable to support, maintain and educate his infant children, or the infant children of his wife up to the age of sixteen years, but this shall not be deemed to imply that fathers are not so liable at common law. 63 and 64 V. c. 28, s. 8.

An order may be obtained for desertion.

ALBERTA AND SASKATCHEWAN.

Chap 29, C. O. 1905.

The Supreme Court of the North-West Territories shall have jurisdiction to grant alimony to any wife who would be entitled to alimony by the law of England to divorce and to alimony as incident thereto, or to any wife whose husband lives separate from her without sufficient cause and under circumstances which would entitle her by the law of England to the restitution of conjugal rights, and alimony when granted shall continue until the further order of the court.

BRITISH COLUMBIA.

B. C. Statutes, Chap. 18.

Sec. 2. Any married woman deserted by her husband may summons him before a magistrate or two justices of the peace, who if satisfied that the husband is able wholly or in part to maintain his wife, or his wife and family, and has wilfully refused or neglected to do so, and has deserted his wife, may order the husband to pay a weekly sum not exceeding twenty dollars, according to his means.

A woman is deserted if she is living apart from her husband because of repeated assaults, or other acts of cruelty, or refusal or neglect without sufficient cause to provide her with food and other necessities of life, when able to do so.

Order for maintenance cannot be given if wife guilty of adultery.

Trial to be private.

R. S. B. C. Chap. 130, sec. 25. A married woman living apart from her husband because of cruelty or other causes justifying her leaving him and rendering him liable for her support, or where husband is a lunatic, prisoner, or from habitual drunkenness or profligacy or other cause neglects or refuses to provide for her support and that of his family, or whose husband never was in British Columbia, or who is deserted and abandoned by her husband, may obtain an order for protection from the magistrate entitling her to the earnings of her minor children, free from any debts of her husband.

CHAPTER VI.

Divorce and Separation.

PRINCE EDWARD ISLAND.

According to the English law a man cannot compel his wife to live with him by force or prevent her by force or lock and key from leaving his house.

An act for establishing a Court of Divorce passed April 10, 1835. Causes, Impotency, Adultery and Consanguinity within the degrees prohibited in and by Act of Parliament, 32nd year of the reign of Henry VIII., and no other cause whatever. The wife in such case not barred of her dower or the husband be deprived of any tenancy by courtesy unless it should be so expressly adjudged and determined in and by such sentence of divorce. V. William IV., cap. 10.

No distinction made as to sex in justifiable causes of divorce. The court has not been invoked for many years.

NEW BRUNSWICK.

C. S. of N. B. 1897, Chap. 50.

A Court of Divorce and Matrimonial Causes.

A divorce is granted for: Adultery, consanguinity within the term prohibited by Act of Parliament made in 32nd year of Henry VIII., and for impotence.

A man cannot compel his wife to live with him.

Extreme cruelty no cause for divorce.

No distinction is made as to sex of petitioner.

NOVA SCOTIA.

R. S. 1900, p. 862.

A Court of Divorce and Matrimonial Causes in Nova Scotia.

Cause: Impotence, consanguinity, cruelty, adultery.

No distinction is made as to the sex of the petitioner.

QUEBEC.

Civil Code of Lower Canada

C. C. 185. Marriage can only be dissolved by the natural death of one of the parties.

C. C. 108. The presumption of death arising from absence does not apply in the case of marriage.

Those seeking divorce must apply to the Federal Parliament. The bill is introduced in the Senate. The courts, however, grant separation from bed and board.

C. C. 206. Separation from bed and board does not dissolve the marriage tie.

C. C. 207. The separation relieves the husband from the obligation of receiving his wife and the wife from living with her husband.

C. C. 208. Separation from bed and board carries with it separation of property; it deprives the husband of the rights which he had over the property of his wife and gives to the wife the right to obtain restitution of her dowry and of the property that she brought in marriage, also all the benefits of all gifts and advantages conferred on her by the marriage contract unless they have been forfeited by adultery, saving the rights of survivorship.

C. C. 213. Either party thus separated, not having sufficient means of subsistence may obtain judgment against the other for alimentary pension.

C. C. 214. The children are usually entrusted to the party who has obtained the separation unless ordered otherwise by the court after consultation with a family council.

C. C. 215, 165. Whoever may be entrusted with the care of the children, the father and mother respectively retain the right of watching over their maintenance and education and are obliged to contribute thereto in proportion to their means.

C. C. 209. When community of property exists separation dissolves that community.

C. C. 186. Separation from bed and board can only be demanded for specific causes which must be proved; it cannot be based on mutual consent, or granted on default to appear.

C. C. 187. A husband may demand the separation on the ground of his wife's adultery.

C. C. 188. A wife may demand the separation on the ground of her husband's adultery, if he keep his concubine in their common habitation.

C. C. 189. Husband and wife may respectively demand this separation on the ground of outrage, ill-usage or grievous insult committed by one towards the other.

C. C. 191. The refusal of a husband to receive his wife and to furnish her the necessaries of life is another cause for which she may demand separation.

ONTARIO.

R. S. 1897.

There is no divorce court in Ontario. Those seeking divorce must do so through the Senate of Canada.

The High Court has power to grant alimony to any wife entitled to such by the law of England or to any wife who would be entitled by the law of England to a divorce and alimony.

The High Court has also power to declare a marriage void if solemnized illegally.

MANITOBA.

R. S. M. 1902.

Anyone seeking divorce in Manitoba must apply to the Senate of Canada.

The Court of Kings Bench exercises the right to deal with the validity of the marriage contract in cases of fraud, duress and lunacy.

No protection order can be given to a wife permitting her to live apart from her husband on the ground of husband's adultery. (See chapter on Protection Order).

ALBERTA AND SASKATCHEWAN.

No divorce court in these provinces.

The Supreme Courts deal with alimony and validity of marriages the same as in Ontario.

Persons seeking divorce must do so through the Senate of Canada.

BRITISH COLUMBIA.

R. S. 1897, Cap. 62.

British Columbia has a Court of Divorce and Matrimonial Causes.

Sec. 5. Divorce *a mensa et thoro* abolished and judicial separation granted in place, having the same force and consequence as a divorce *a mensa et thoro*. It may be obtained either by hus-

band or wife for adultery, cruelty or desertion without cause for a period of time of two years or more. The decree for separation may be reversed if obtained for desertion when proved that there were reasonable grounds for that desertion.

Court may direct alimony to wife or her trustee.

In case of judicial separation wife to be considered as feme sole with respect to property she may acquire from date of sentence.

Sec. 12, 16. Dissolution of marriage with right to remarry granted to a man for wife's adultery, but a woman must petition on the ground of incestuous adultery, or bigamy with adultery, or rape, or sodomy, or bestiality, or of adultery coupled with such cruelty without adultery which would have entitled her to a mensa et thoro or of adultery coupled with desertion for two years or upwards without reasonable excuse. The petition is granted on proof that the adultery has not been condoned, that the petitioner is innocent of adultery and has in no way been accessory to or connived at the adultery, or that the petition is presented or prosecuted in collusion with either of the respondents.

Sec. 29. Court may order settlement of property for benefit of innocent party and children of marriage.

Sec. 39. Either party dissatisfied with any decision of the court in any matter which may be made by the judge ordinary alone, may, within three calendar months from decision, appeal therefrom to the full court, whose decision shall be final.

When no appeal has been presented within the time limit then the parties may marry again as if the marriage had been dissolved by death.

No clergyman compelled to solemnize marriage of a divorced person.

Costs as ordered by court as may seem just.

A husband separated from his wife on account of intemperance, and making no provision for her maintenance, thereby leaving her without any means of support, is not entitled to a divorce on ground of adultery committed by her after the separation.

Forest and Forest, 8, B. C. R. 19.



CHAPTER VII.

Wills and Intestacy.

The following requisites to the making of a valid will are necessary in all the Provinces of Canada.

1. No person under twenty-one years of age can make a valid will.
2. No imbecile, insane or interdicted person can make a valid will.
3. The testator must be of a sound mind.
4. All wills must be signed at the end of the will by the testator.
5. All wills must be in writing. By "writing" is meant either print, handwriting, typewriting, etc., and is used to express that a will cannot be oral.
6. Two or more persons cannot make a will by one and the same act.

There are three forms of wills: The notarial or authentic; the English form and the holograph will. The latter is only valid in Manitoba or Quebec.

The notarial or authentic form is executed before two notaries or one notary and two other witnesses, neither of whom shall be clerk or servant to the notary, the testator in their presence and with them signs the will, or declares he cannot do so after it has been read to him by one of the notaries in the presence of the other, or by the notary in the presence of the other witnesses. Mention is made in the will of the observance of the formalities. The date and place of its execution must be stated in the will. Witnesses must be named and described in the will. They must be of the male sex and of full age.

A will cannot be executed before notaries who are related or allied to the testator or to each other in the direct line, or in the degree of brothers, uncles, or nephews.

The original will remains with the notary and needs no probate. Cannot be dictated by signs.

Wills made in the form derived from the laws of England, whether they affect moveable or immoveable property, must be in writing and signed at the end with the signature or mark of the testator made by himself or by another for him in his presence and under his express direction, which signature is then or subsequently acknowledged by the testator as having been subscribed by him to his will then produced, in presence of at least two competent witnesses together, who attest and sign the will immediately in the presence of each other and of the testator and at his request.

Females may serve as attesting witnesses and the rules concerning the competency of witnesses are the same in all other respects as for will in authentic form.

Holograph wills must be wholly written and signed by the testator and require neither notaries or witnesses. They are subject to no particular form.

In holograph wills and wills made in the form derived from the laws of England, whatever comes after the signature of the testator is looked upon as a new act, which in the former case must likewise be written and signed by the testator. In the latter case the attestation of witnesses must follow each signature, or come after the last as witnessing the whole of the will preceding such signatures with the same formalities as the original will.

Subsequent wills, which do not revoke the preceding ones in an express manner annul only such dispositions therein as are inconsistent with or contrary to those contained in the latter wills.

An heir accepting inheritance makes himself liable for his share of debts due by the estate. The taking into his possession as heir by an heir of anything belonging to the estate makes an acceptance.

Any one witnessing a will bars his or her right to any bequest in that will and nullifies any legacy left to the wife or husband of the witness.

PRINCE EDWARD ISLAND.

English Form of Will.

A recent law gives full power to a married woman to make a will disposing of her property quite independent of her husband.

An executor must present the will for registration within thirty days after the death of the testator.

Marriage revokes a will.

The estate of a person dying intestate is administered by the Surrogate Court. If the intestate is a man the court administration is granted to the widow or next of kin but if she or he does not accept it, it may be granted to a creditor. An estate may also be administered in the Court of Chancery.

A man dying intestate, one-third of his personal property goes to his wife as absolute owner besides her dower of one-third interest for life in houses and lands, when such wife shall not be otherwise endowed before marriage. The residue of real and personal estate is divided among children or their representatives, if none, then to next of kin, but not beyond children of brother and sister. If there be no children one-half of his personal property goes to his wife.

A woman dying intestate leaving husband and children, one-third of personal property goes to husband, residue to children and their legal representatives, no children living at time of death all personal property goes to husband. Husband takes no interest in real estate. III. Edward VII., cap. 9.

NEW BRUNSWICK.

New Brunswick C. S., 1892, Chap. II.

English Form of Will.

Although by the Married Woman's Property Act (28 Vic., cap. 24), a woman can dispose of her property by will as if she were unmarried, it is still an unsettled question whether a woman can make a will without the consent of her husband being endorsed thereon, due perhaps to sub-section 4 of section 4 of the same act which expressly states that nothing in the act shall be taken to prejudice the husband's tenancy or right to tenancy by the courtesy in any real estate of his wife. The best opinion is that the wife can make a will without her husband's acquiescence, but it cannot touch the husband's right of courtesy.

A wife can revoke the will at any time without consent.

Every will is revoked by marriage, except a will made in the exercise of a power of appointment, when the estate appointed in default of appointment could not pass to the testator's heirs or next of kin.

Intestacy of Husband.—The real estate of a man dying intestate is divided, subject to dower, among his children or their legal representatives; if no issue, next of kin or their legal representatives.

Children advanced by settlement or portion not equal to the other shares shall have so much as to have all equal.

The personal property is divided: One-third to widow; if no children, half to widow, balance to next of kin.

The real estate of a wife dying intestate is divided same as that of husband subject to tenancy by courtesy.

New Brunswick Revised Statutes, Chap. 161.

Sec. 3. The separate personal property of a married woman dying intestate on or after the first day of January A.D. 1896 shall be distributed in the following manner, in case she has died or dies leaving children by a former husband, her surviving husband shall be entitled to one-third thereof, and her children, including those by her surviving husband, and their representatives, to the remaining two-thirds; and in case she has died, or dies leaving children by her surviving husband only, he shall be entitled to one-half thereof, and her children and their representatives to the remaining half; and if there be no such child or children living at the death of the wife so dying intestate, then such property shall pass and be distributed as if this section and The Married Womans' Property Act, chap. 78 of these consolidated statutes had not been passed. 58 V., C. 24, s. 22.

An heir making an acceptance is only liable for the debts due by the estate to the amount of his inheritance.

NOVA SCOTIA.

R. S. 1900, Cap. 139, 140.

English Form of Will.

A declaration must be made by a married woman before the witnesses of her will that she makes it of her own free will and without undue influence from or by her husband; this applies only when under the will her husband takes a greater interest in her property than he would be entitled to were she to die intestate, and such declaration must be embodied in an affidavit or other evidence of the will. Sec. 15.

In wills of married women made without consent of husband, husband can elect between provision in the will and tenancy by courtesy.

Marriage revokes a will except (a) where it is declared in the will that the same is made in contemplation of such marriage (b) when the wife or husband of the testator elects to take under the will by an instrument in writing signed by such wife or husband and filed, within one year after the testator's death, in the court of probate in which probate of such will is taken or sought to be taken, or (c) when the will is made in exercise of a power of appointment.

A will by a married woman where her husband takes greater interest than if she were to die intestate must in addition to being signed in the ordinary way, namely, before two witnesses who sign in the presence of the testator and in that of each other, must make the declaration called for before a judge in the Supreme Court or a judge of a county court, a barrister of the Supreme Court, notary public, a commissioner for taking of affidavits or a justice of the peace.

A legacy made in favor of a creditor is not deemed to be in compensation of his claim, nor that in favor of a servant in compensation of wages.

Every testamentary disposition lapses if the person in whose favor it is made does not survive the testator.

Intestacy, Chap. 140.

A man dying intestate, his real estate, subject to dower, shall descend to his children in equal shares, if no children surviving, to their legal representatives. When no issue, one-half to his father and one-half to his widow in lieu of dower. If no widow nor issue, all to father; no father nor issue one-half to widow and one-half to mother, brother and sisters (or their representatives) in equal shares. If no widow, nor issue, nor father, nor mother, the whole goes to brothers and sisters or their representatives, failing these, to next of kin.

Kindred of half blood share equally with whole blood.

In distribution of personal estate one-third goes to widow in addition to dower, the balance to those entitled to real estate.

The personal property of a man: If issue, one-third to his widow; if no issue, one-half shall go to his widow, the residue shall be distributed among those persons as if it were real estate.

Sec. 6. If no issue or next of kin the whole to his widow. If no issue, no widow, the whole of such property to next of kin as if it were real property.

A wife dying intestate, her husband takes interest as tenant by courtesy of one-third personal estate, balance among issue. No issue, one-half real and personal estate to husband, one-half to father. No father surviving to mother and brothers and sisters in equal shares. If no issue, father, mother, brother or sisters or their representatives, the whole goes to husband. Sec. 7.

QUEBEC.

Civil Code.

The three forms of wills are valid in Quebec.

C. C. 846. Legacies made in favor of the notaries or witnesses, or to the wife of any such notary or witness, or any relation of such notary or witness in the first degree (one generation) are void.

C. C. 184. A wife, although she cannot dispose of her property in her lifetime without the authorization of her husband, may make a will without his authorization.

C. C. 1293. One consort cannot to the prejudice of the other bequeath more than his or her share of the community.

C. C. 606. A person dying intestate, his or her property succeeds to the descendants or ascendants to the twelfth degree or generation.

In default of relations within the heritable degree the succession belongs to the surviving consort, who has to be judicially put in possession of estate. In default of surviving consort the estate devolves to the Crown. C. C. 607.

C. C. 625 to 630. Children inherit equally. If there is no issue, half to father and mother, other half to brothers and sisters. If only one parent surviving, half to that parent, the other half to brothers and sisters, nephews and nieces of the deceased. If no father and mother, nor sisters or brothers, nephews nor nieces, the other ascendants succeed to the exclusion of all other collaterals. The succession is divided equally between the ascendants of the paternal and maternal lines. Ascendants inherit to the exclusion of all others, property given by them to their children or other ascendants who die without issue.

The fact that neither husband nor wife is heir at law until after the twelfth generation is important, owing to the community of property that exists if there is no marriage contract to the

contrary. Either of the consorts dying where there is no issue, the estate is divided and half belongs to the relations of the deceased. It is most important in such a case for both consorts to make their wills.

C. C. 758. Every gift made so as to take effect after death which is not valid as a will, or as permitted in a contract of marriage, is void.

ONTARIO.

A married woman can make a will as freely as a feme sole.

English form of will.

Marriage revokes a will, except the will be made in contemplation of marriage. This only applies to a will made by any person dying on or after the 13th day of April, 1897.

Intestacy.

Real and personal estate divide alike.

If a man dies intestate his real and personal estate goes to crown if he leaves no wife or relations. If wife and no issue, \$1,000 to wife and half of balance to wife; other half equally to next of kin. If no kin, residue to crown. If issue, one-third to widow, remainder equally to children or their representatives. If only wife, father and mother, half to wife, half to father and mother. If net value of estate does not exceed \$1,000 widow takes all, if over \$1,000 widow takes \$1,000 absolutely and one-half the residue, the rest goes to next of kin in equal degree to the intestate. No representatives admitted by collaterals after brothers and sisters' children. Status of Distribution, 22 and 23.

If wife, father, mother, brothers and sisters or their representatives, half to wife, residue in equal shares. If only wife and brother and sisters, half to wife, residue equally to brothers and sisters. Wife takes \$1,000 as in previous paragraph. Widow in all cases may take her dower or distributive share in her husband's real estate. If only brothers and sisters and grandparents, brothers and sisters take all to the exclusion of grandparents, although equal of kin. If only grandparents and uncles and aunts grandparents inherit as nearer of kin.

If a woman die intestate, if husband and no issue, one-half to husband, residue same as if unmarried, that is, to next of kin, if no kin, to the crown. If husband and issue, one-third to husband, residue to issue, according to opinion of some the husband has right of tenancy by courtesy and the administration of his wife's personal estate for his own benefit instead of distributive share.

A man who has insured his life for the benefit of his wife may bequeath the insurance to another person.

MANITOBA.

R. S. M. 1902.

Unless otherwise stated, on the death of a devisee before that of the testator the real estate devised shall be included in the residuary devise, except the devisee shall be issue of the testator.

Chap. 106. A married woman may by will devise or bequeath her property in any manner she may see fit.

Chap. 48. A man dying intestate, one-third of the estate goes to the widow and two-thirds in equal shares to the child or children; if no children the widow takes the whole; if no widow or issue the whole goes to the father; if no widow, issue or father then to the mother, brothers and sisters in equal shares. The separate property of a married woman dying intestate is distributed in the proportions and in the same manner as the property of a husband dying intestate.

Marriage revokes a will except a will made in the exercise of a power of appointment.

The holograph form of will valid in Manitoba, as well as the English form of will.

ALBERTA AND SASKATCHEWAN.

English Form of Will.

No holograph form of will valid in Alberta and Saskatchewan.

The laws relating to the descent of real and personal property are the same.

A married woman as free to dispose of her property by will as a man.

Ord. 13, 1901. A man dying intestate leaving no issue the whole of his property goes to his widow provided that prior to his death such widow had not left him and lived in adultery. If issue, one-third to widow, balance to issue in equal shares. If no widow, or issue, or their representatives, the father if living takes the whole. If no widow, no issue or their representatives and no father living the mother takes the whole.

Sec. 3. An illegitimate child inherits equally with a legitimate child the property of a mother dying intestate.

Sec. 4. An illegitimate child dying intestate and leaving no issue the mother is heir.

BRITISH COLUMBIA.

B. C. R. S. 1897, Chap. 193.

English Form of Will.

Sec. 15. Marriage revokes a will.

A married woman may dispose of her separate property by will.

The personal estate is first liable for the payment of debts and funeral expenses before resort can be had to the real estate, which latter can only be interfered with by special order of the court.

The remainder of the personal estate of an intestate is divided according to the Administration Act: One-third to the widow and the remainder among the descendants per stirpes equally, unless portions have been advanced in the lifetime of the deceased. If no descendants, then half to the widow and half to next of kin. If no widow then whole equally among descendants per stirpes. If neither widow or descendants then equally among next of kin of same degree.

Real estate of an intestate descends after paying dower (1) to lineal descendants per stirpes (2) failing children to father, unless estate came on the part of the mother (3) failing father to mother (4) failing father and mother to collateral relatives subject to certain rules and regulations of the "Inheritance Act." If widow and no children, widow takes half in addition to dower. Statutes 1898, Cap. 40.

Descendants however remote share per stirpes equally and relatives of half blood share equally with relatives of whole blood.

Tenancy by courtesy still exists if wife dies intestate.

If a married woman dies without a will her personal estate, if there are children, in the same proportion as that of the personal estate of a man dying intestate; if no children then the personal estate will all go to the husband as administrator. Her real estate descends in the same manner as the real estate of a man. See R. S. B. C. Chap. 971, Sec. 5, and Statutes 1898, chap. 46.



CHAPTER VIII.

Trustees, Executors, Tutors.

EXTRACT FROM CRIMINAL CODE.

210. Every one who as parent, guardian or head of a family or under legal duty to provide necessities for any child under the age of sixteen years is criminally responsible for omitting, without lawful excuse, to do so while such child remains a member of his or her household, whether such child is helpless or not, if the death of such child is caused, or his life is endangered or his health is or is likely to be permanently injured by such omission.

PRINCE EDWARD ISLAND.

The English law of the right of the father to the control of an infant's religious education is fully recognized by the Custody of Children Act, 1891. No ante-nuptial promise valid to the contrary.

The father has an unlimited right to the custody of his children subject only to the control of the courts in breaches of duty. When he abuses his right to the detriment of the child the courts will take the child from the father and give it to the mother. Poverty of the father is not any ground for removing his child from his custody.

Women may be guardians independent of relationship.

Women may be appointed administratrix or trustees. The wife has the first right to be appointed administratrix to her husband's estate.

NEW BRUNSWICK.

N. B. Revised Statutes, Chap. 112, Sec. 196.

It shall be lawful for the court upon the petition by the next friend or mother of any infant or infants under sixteen years of age, to order that the petitioner shall have access to such infant or infants at such times and subject to such regulations as the Court shall deem proper, or to order that such infant or infants shall be delivered to the mother and remain in or under her custody or control, or shall, if already in her custody or under her control, so remain until such infant or infants shall attain such age not exceeding sixteen years, as the Court shall direct, and also to order that such custody or control shall be subject to such regulations as regards access by the father or guardian of such infant or infants, and otherwise as the Court shall deem proper. 54 V. c. 4, s. 182.

NOVA SCOTIA.

Remuneration for trusteeship may be fixed by Judge.

R. S. 1900, Cap. 115, Sec. 4. Father is the lawful guardian, or, if dead, then the mother becomes guardian alone or jointly with any guardian appointed by the father.

Sec. 5. No guardian being appointed and father and mother both dead the minor, if fourteen years of age, may nominate a person to be guardian, if under fourteen the executors or administrators of any estate in which the infant is interested, or any one next of kin.

R. S. 1900, Cap. 151, Sec. 17. When any freehold hereditament is vested in a married woman as a bare trustee she may convey it as if she were a feme sole.

 QUEBEC.

Trustees act gratuitously unless it be otherwise provided in the document creating the trust.

C. C. 910. No person can be compelled to accept the office of testamentary executor.

C. C. 905, 906. Single women and widows may be executors. Married women cannot accept testamentary executorship without the consent of their husbands. Single women and widows who marry while they are testamentary executors do not forfeit their office but require the consent of their husbands to continue the exercise of their office.

Tutors.

C. C. 922. A testator cannot appoint a tutor to a minor or a curator to a person requiring one, but can give his executors or administrators specific powers that amount to the same thing.

C. C. 282. The father as the lawful tutor of his children cannot refuse the office.

C. C. 283. Mothers and grandmothers, who have been appointed to tutorship during their widowhood, are deprived of them from the day on which they contract a second marriage, and if the minors have not been provided with another tutor prior to such marriage, the husbands of such mothers and grandmothers remain responsible for the administration of the property of the minors during the second marriage.

C. C. 249. All tutorships are dative; they are conferred on the advice of a family council by a competent court or by any Judge of such court, having civil jurisdiction in the district where the minor is domiciled.

C. C. 252. With the exception of the mother and other female ascendants during widowhood, the relations taking part in a family council must be males of the full age of twenty-one years and residing in the district where the appointment of the tutor is to be made.

C. C. 342. A wife may be curatrix to her interdicted husband.

ONTARIO.

A married woman can be appointed trustee, executrix and guardian but cannot convey land as a trustee without consent of her husband.

May be guardian to other children than her own.

MANITOBA.

R. S. M. 1902, Cap. 79.

Guardian may be either man or woman.

Sec. 11. Guardian may be appointed by Surrogate Court on application of friends of minor upon notice being given to mother.

Sec. 7. A mother or other guardian may be appointed by the Surrogate Court as guardian to a minor notwithstanding any testamentary provision to the contrary or appointment by the father of any other guardian.

Cap. 107, Sec. 3. A provision made in this Act that a woman applying for protection may be given the legal custody of any children under the age of sixteen of the marriage between the applicant and her husband.

Cap. 106. A married woman can be an executrix and an administrator or trustee; can sue and be sued, may transfer and join in transferring any such property with her husband as if she were a feme sole.

ALBERTA AND SASKATCHEWAN.

C. O. of the N. W. T., Chap. 21.

Mother may be appointed notwithstanding other appointment by father as guardian.

Sec. 566. The Court or Judge may give effect to the testamentary appointment of the guardian by the mother of infant children, either as respects the persons or estates, or one or both, notwithstanding the previous appointment of guardians by testament of the father of such infant, upon petition presented and facts proved if it shall seem advisable and in the interest of the infant..

Unless the Court or Judge shall otherwise order no guardian shall be appointed to the person or estate of any infant of the age of fourteen or over without the consent of such infant.

Sec. 574. The Court or Judge upon application of mother of any infant being in the sole custody of the father or other person by his authority, may make an order for the access of the mother at such times and subject to such regulations as the Court or Judge thinks convenient and just, and if such infant be within the age of twelve years, may make an order for the delivery of such infant into the custody and control of the mother and there remain until such time as the Court and Judge shall prescribe.

Sec. 577. No order directing that the mother shall have the custody of or access to the child shall be made in favor of a mother who is guilty of adultery or otherwise of improper conduct.

The consent of a child over seven years necessary before making application for sale of any of his property.

BRITISH COLUMBIA.

Revised Statutes, Chap. 96.

Father may arrange by will the guardianship of his child till twenty-one years of age or for a less time.

No mother against whom adultery has been proved entitled to the custody of her child.

Guardian appointed by Court cannot send infant beyond the seas or out of the jurisdiction of said Court.

Mother can petition Judge for the care of her children until seven years of age, if other guardians have been appointed by father, and after seven years to have the right of access to them.

Women may be appointed trustees or administrators. If married, her husband is not liable for any breach of trust, only her own separate property.



CHAPTER IX.

Illegitimate Children.

PRINCE EDWARD ISLAND.

An illegitimate child takes no share in the estate of the mother who dies intestate.

NEW BRUNSWICK.

The father of an illegitimate child can be made to pay one hundred dollars at suit of Alms House Commissioners. He has no other responsibility.

An illegitimate child takes no share with the legitimate children of a woman dying intestate.

NOVA SCOTIA.

Bastardy Act, Chap. 51, R. S. N. S.

Part First.

Sec. 8. As soon as convenient after the birth of a bastard child, any two justices applied to in that behalf by a ratepayer of the poor district to which child is, or likely to become, chargeable, shall issue a warrant (Form E) directed to any constable, or to all constables, requiring them, at a time and place mentioned in the warrant, to bring before the two Justices the mother and the putative father.

Sec. 9. (1) Upon the mother and putative father being brought before the two Justices in obedience to such warrant, they shall hear the evidence of the mother, the putative father, and any other evidence which is adduced before them.

(2) Upon such evidence they may, unless they discharge the putative father, make an order of filiation requiring him to pay to the overseers of the poor for the poor district, or to the town or city as the case may be, (a) the expenses incidental to the lying in and maintenance of the mother and to the birth and main-

tenance of the child up to the date of the order, and (b) the expenses of the funeral of the child if it has died before the making of such an order, or (c) if it has not died, such sum of money weekly toward the maintenance of such child while chargeable to such poor district, or for such a period as they consider right, respect being had to the ability and prospective means of the putative father.

(3) The two Justices may order such putative father to give a bond for the fulfilment of such order, or in default thereof to pay a lump sum of not less than eighty nor more than one hundred and fifty dollars to be fixed by them in lieu of the payments in this section mentioned, and to be applied as in this section mentioned.

(4) The two Justices may in a separate order direct that the mother shall bear such part of the expenses of the maintenance of such child as to them seems just, and may require that she shall suckle the child for at least ten months, or unless she produces before them the certificate of a duly qualified medical practitioner that she is unable to do so.

Part Second.

Sec. 21. The putative father of every bastard child shall be liable to contribute:

(a) To the medical and all other expenses connected with the birth of such child, its maintenance and education until the child is able to maintain itself, and with its burial in case it dies before becoming able to maintain itself, and

(b) To the expense of the maintenance and care, medical and otherwise, of the mother of such child during three months next preceding to its birth, and during such period after birth as medical or other special or unusual care and nursing are necessary in connection with or as a consequence of the birth of such child, and

(c) To the expense of the burial of the mother in case of her death at or in consequence of the birth of such child.

(2) No such child who is under the age of fifteen years shall be deemed able to maintain itself.

Sec. 28 (1) This Part (Part Second) shall not apply to any putative father who has fulfilled the terms of any order of filiation made against him in respect to the same bastard child under Part First.

(2) If the terms of any such order have not been fulfilled, the Court in giving judgment in an action under this Part shall take into consideration any payments made under such order.

(3) In any such action an order of filiation shall be prima facie evidence of the paternity of such child.

QUEBEC.

An illegitimate child has a right to establish judicially his claim of paternity or maternity, and the proof thereof is made by writings or testimony, under the conditions and restrictions set forth in articles 232, 233 and 234, 241 of Civil Code.

C. C. 232. In default of the act of birth and of an uninterrupted possession, or if the child has been described either under false names, or as being the child of unknown parents, the proof of filiation may be made by testimony; nevertheless this evidence can only be admitted when there is a commencement of proof in writing or when the presumptions or indications resulting from facts there ascertained are sufficiently strong to permit its admission.

C. C. 240. The forced or voluntary acknowledgement by the father or mother of their illegitimate child gives the latter the right to demand maintenance from each of them according to circumstances.

MANITOBA.

An illegitimate child has no legal claim upon his father for any support whatever.

An illegitimate child takes no interest in the estate of the mother dying intestate.

ALBERTA AND SASKATCHEWAN.

An act similar to that passed in British Columbia was passed in the Territories November 21, 1903. The affidavit must be made in the Territories in the office of the Clerk of the Supreme Court for the Judicial District in which she resides, or in the office of a Deputy Clerk, if she reside in his District, instead of before one of His Majesty's Justices of the Peace as in British Columbia.

Cap. 19, Statutes of Alberta, sec. 13. Illegitimate children shall inherit from the mother as if they were legitimate, and through the mother, if dead, any land which she would, if living, have taken by purchase, gift, devise or descent from any other person.

BRITISH COLUMBIA.

An Act Respecting "The Support of Illegitimate Children,"
May 4, 1903.

1. Any person who furnishes food, clothing, lodging or other necessities to any such child born out of lawful wedlock may maintain an action for the value thereof against the father of the child, if the child was a minor at the time the necessities were furnished and was not residing with his or her reputed father and maintained by him as a member of his family.

2. Where the person suing for the value of the necessities is the mother of the child or a person to whom the mother has become accountable for the maintenance, the fact of the defendant being the father of the child shall be proved by other testimony than that of the mother.

3. No action shall be sustained under the preceding two sections unless it is shown upon the trial thereof that while the mother of the child was pregnant or within six months after the birth of her child she did voluntarily make an affidavit in writing before some one of His Majesty's Justices of the Peace declaring that the person afterwards charged in the action is really the father of the child; nor unless she deposited the affidavit within the time aforesaid in the office of the Registrar of the County Court nearest the place in which she then resided.

The affidavit shall not be evidence of the fact of the defendant being the father of the child.

5. This Act shall not take away or abridge any right of action or remedy which without this act might have been maintained against the father of an illegitimate child.



CHAPTER X.

Franchise.

Canadian women have no federal or provincial privileges. In municipal affairs in all the provinces widows and spinsters who are ratepayers have the same voting privilege as men, but are not eligible to municipal office. In some of the provinces municipal voting privilege has been extended to married women.

PRINCE EDWARD ISLAND.

Municipal franchise, widows and spinsters being property holders.

School franchise, widows and spinsters being property holders. Eligible for office.

NEW BRUNSWICK.

Municipal franchise, widows and spinsters who are ratepayers.

School franchise, widows and spinsters who are ratepayers. Eligible for office.

NOVA SCOTIA.

Municipal franchise, every woman who (a) is of the full age of twenty-one years (b) is a British subject by birth or naturalization and (c) was at the time of the last assessment assessed as to property to the value of one hundred and fifty dollars, or in respect of personal property, or real and personal property together to the value of three hundred dollars. Provided that no married woman shall be entitled to vote under this section, whose husband is entitled to vote. Chap. 4, sec. 7, R.S. 1900.

School franchise, widows and spinster ratepayers. Eligible for office.

QUEBEC.

Municipal franchise, widows and spinsters who are property holders. The Montreal Charter has been amended, permitting married women judicially separated from their husbands to vote on municipal affairs when qualified the same as widows and

spinsters, and prohibiting a husband judicially separated from his wife from voting on his wife's property. It was also amended extending the franchise to widows and spinsters who are assessed as tenants.

School franchise, all widows and spinsters owning property. Women not eligible for office.

ONTARIO.

Municipal franchise, spinsters and widows are entitled to vote who are assessed as owners or occupants of property assessed for not less than \$400 or for income of not less than \$400. All women, married or single, who are taxed as property owners are entitled to vote on money by-laws when such are submitted.

School franchise, any woman, married or single, who is a ratepayer to any extent is entitled to vote and is eligible for office.

MANITOBA.

Municipal franchise, any woman ratepayer.

School franchise, any woman ratepayer. Women eligible for office.

ALBERTA AND SASKATCHEWAN.

Municipal franchise, widows and spinsters. In Edmonton and Calgary married women being property owners.

School franchise, every ratepayer. Eligible for office. Ord. 1996, No. 2, Sec. 17, 31.

BRITISH COLUMBIA.

Municipal franchise, widows and spinsters being freeholders. In Victoria all women over 21 years of age have the municipal franchise.

School franchise. In the cities of Victoria, Vancouver, New Westminster and Nanaimo women whose names are on the assessment roll have the right to vote for school trustees and are eligible for office. In all other parts of the Province the wives of voters in a school district have the right to vote for, and to serve as, school trustees.

CHAPTER XI.

Extracts from the Criminal Code.

Chap. 146, R. S. 1906.

The fact that an offender is ignorant of the law is not an excuse for any offence committed by him.

RAPE.

Sec. 299. Every one who commits rape is guilty of an indictable offence and liable to suffer death, or to imprisonment for life.

Sec. 300. Every one is guilty of an indictable offence and liable to seven years' imprisonment who attempts to commit rape.

Sec. 301. Every one is guilty of an indictable offence and liable to imprisonment for life and to be whipped, who carnally knows any girl under the age of fourteen years, not being his wife, whether he believes her to be of or above that age or not.

Sec. 302. Every one who attempts to have unlawful carnal knowledge of any girl under the age of fourteen years is guilty of an indictable offence and liable to two years' imprisonment, and to be whipped.

ABORTION.

Sec. 303. Every one is guilty of an indictable offence and liable to imprisonment for life who, with intent to procure the miscarriage of any woman, whether she is or is not with child, unlawfully administers to her or causes to be taken by her any drug or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent.

Sec. 304. Every woman is guilty of an indictable offence and liable to seven years' imprisonment who, whether with child or not, unlawfully administers to herself or permits to be administered to her any drug or other noxious thing, or unlawfully uses on herself or permits to be used on her any instrument or other means whatsoever with intent to procure miscarriage.

Sec. 305. Every one is guilty of an indictable offence and liable to two years' imprisonment who unlawfully supplies or procures any drug or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she is or is not with child.

Sec. 207. Every one is guilty of an indictable offence and liable to two years' imprisonment who knowingly, without lawful justification or excuse—

(c) Offers to sell, advertise, publishes an advertisement of, or has for sale or disposal, any medicine, drug, or article intended or represented as a means of preventing conception or of causing abortion or miscarriage.

NEGLECT IN CHILDBIRTH AND CONCEALING OF DEAD BODY.

Sec. 271. Every woman is guilty of an indictable offence who with either of the intents hereinafter mentioned, being with child and being about to be delivered, neglects to provide reasonable assistance in her delivery, if the child is permanently injured thereby, or dies, either just before or during, or shortly after birth, unless she proves that such death or permanent injury was not caused by such neglect, or by any wrongful act to which she was party, and is liable—

(a) If the intent of such neglect be that the child shall not live, to imprisonment for life.

(b) If the intent of such neglect be to conceal the fact of her having had a child, to imprisonment for seven years.

Sec. 272. Every one is guilty of an indictable offence and liable to two years' imprisonment who disposes of the dead body of any child in any manner, with intent to conceal the fact that its mother was delivered of it, whether the child died before or during, or after birth.

Sec. 306. Every one is guilty of an indictable offence and liable to imprisonment for life who causes the death of any child which has not become a human being, in such a manner that he would have been guilty of murder if such child had been born.

(2) No one guilty of any offence who by means which he in good faith considers necessary for the preservation of the life of the mother of the child, causes death of any such child before or during birth.

SEDUCTION.

Sec. 210. The burden of proof of previous unchastity on the part of the girl or woman under the three next succeeding sections shall be upon the accused. (Passed April 4, 1900.)

Sec. 211. Every one is guilty of an indictable offence and liable to two years' imprisonment who seduces or has illicit connection with any girl of previously chaste character of or above the age of fourteen years and under the age of sixteen years.

Sec. 309. Every one is guilty of an indictable offence and liable to seven years' imprisonment who procures a feigned or pretended marriage between himself and any woman, or who knowingly aids and assists in procuring such feigned or pretended marriage.

Sec. 212. Every one, above the age of twenty-one years, is guilty of an indictable offence and liable to two years' imprisonment who, under promise of marriage, seduces and has illicit connection with any unmarried female of previously chaste character, and under twenty-one years of age.

Sec. 213. Every one is guilty of an indictable offence and liable to two years' imprisonment—

(a) Who, being a guardian, seduces or has illicit connection with his ward; or

(b) Who seduces or has illicit connection with any woman or girl previously chaste and under the age of twenty-one years who is in his employment in a factory, mill, workshop, shop or store, or who, being in a common, but not necessarily similar, employment with him in such factory, mill, workshop, shop or store, is, in respect of her employment or work in such factory, mill, workshop, shop or store, under or in any way subject to his control or direction or receives her wages or salary directly or indirectly from him.

Sec. 214. Every one is guilty of an indictable offence and liable to a fine of four hundred dollars, or to one years' imprisonment, who, being the master or other officer or a seaman or other person employed on board of any vessel, while such vessel is in any water within the jurisdiction of the Parliament of Canada, under promise of marriage, or by threats, or by the exercise of his authority, or by solicitation, or the making of gifts or presents, seduces and has illicit connection with any female passenger.

(2) The subsequent intermarriage of the seducer and the seduced is, if pleaded, a good defence to any indictment for any offence against this or either of the two last preceding sections, except in the case of a guardian seducing his ward.

Sec. 215. Every one who, being the parent or guardian of any girl or woman, who—

(a) Procures such girl or woman to have carnal connection with any man other than the procurer; or

(b) Orders, is party to, permits or knowingly receives the avails of the defilement, seduction or prostitution of such girl or woman;

Is guilty of an indictable offence, and liable to fourteen years' imprisonment if such girl or woman is under the age of fourteen years, and if such girl or woman is of or above the age of fourteen years to five years' imprisonment.

Sec. 216. Every one is guilty of an indictable offence and liable to two years' imprisonment with hard labor, who—

(a) Procures, or attempts to procure, any girl or woman under twenty-one years of age, not being a common prostitute or of known immoral character, to have unlawful carnal connection, either within or without Canada, with any other person or persons; or

(b) Inveigles or entices any such woman or girl to a house of ill-fame or assignation for the purpose of illicit intercourse or prostitution, or knowingly conceals in such house any such woman or girl so inveigled or enticed; or

(c) Procures, or attempts to procure, any woman or girl to become, either within or without Canada, a common prostitute; or

(d) Procures, or attempts to procure, any woman or girl to leave Canada with intent that she may become an inmate of a brothel elsewhere; or

(e) Procures any woman or girl to come to Canada from abroad with intent that she may become an inmate of a brothel in Canada; or

(f) Procures or attempts to procure any woman or girl to leave her usual place of abode in Canada, such place not being a brothel, with intent that she may become an inmate of a brothel within or without Canada; or

(g) By threats or intimidation procures, or attempts to procure, any woman or girl to have any unlawful carnal connection, either within or without Canada; or

(h) By false pretences or false representations procures any woman or girl, not being a common prostitute or of known immoral character, to have any unlawful carnal connection, either within or without Canada; or

(i) Applies, administers to or causes to be taken by any woman or girl any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower so as thereby to enable any person to have unlawful carnal connection with such a woman or girl.

Sec. 217. Every one who, being the owner or occupier of any premises, or having, or acting or assisting in the management or control thereof, induces or knowingly suffers any girl under the age of eighteen years to resort to or be in or upon such premises for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man, or generally, is guilty of an indictable offence, and is liable—

(a) To ten years' imprisonment if such girl is under the age of fourteen years;

(b) To two years' imprisonment if such girl is of or above the age of fourteen years.

Sec. 218. Every one is guilty of an indictable offence and liable to two years' imprisonment who conspires with any other persons by false pretences, or false representations, or other fraudulent means, to induce any woman to commit adultery or fornication.

Sec. 219. Every one is guilty of an indictable offence and liable to four years' imprisonment who unlawfully and carnally knows, or attempts to have unlawful carnal knowledge of any female idiot or imbecile, insane or deaf and dumb woman or girl under circumstances which do not amount to rape, but where the offender knew, or had good reason to believe at the time of the offence, that the woman or girl was an idiot, or imbecile, or insane or deaf and dumb.

Sec. 220. Every one is guilty of an indictable offence and liable to a penalty not exceeding one hundred dollars and not less than ten dollars, or six months' imprisonment—

(a) Who, being the keeper of any house, tent or wigwam, allows or suffers any unenfranchised Indian woman to be or remain in such house, tent or wigwam knowing or having probable cause for believing that such Indian woman is in or remains in such house, tent or wigwam with the intention of prostituting herself therein; or

(b) Who, being an Indian woman, prostitutes herself therein; or

(c) Who, being an unenfranchised Indian woman, keeps, frequents or is found in a disorderly house, tent or wigwam used for any such purpose.

2. Every person who appears, acts or behaves as master or mistress, or as the person who has the care or management, of any house, tent or wigwam in which any such Indian woman is or remains for the purpose of prostituting herself therein, is deemed to be the keeper thereof, notwithstanding he or she is not in fact the real keeper thereof.

ABDUCTION.

Sec. 313. Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, with intent to marry or carnally know any woman, whether married or not, or with intent to cause any woman to be married to or carnally known by any other person, takes away or detains any woman of any age against her will.

Sec. 314. Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, with intent to marry or carnally know any woman, or with intent to cause any woman to be married or carnally known by any person—

(a) From motives of lucre takes away or detains against her will any woman of any age who has interest, whether legal or equitable, present or future, absolute, conditional or contingent, in any real or personal estate, or who is presumptive heiress or co-heiress or presumptive next of kin to any one having such interest;

(b) Fraudulently allows, takes away or detains any woman being under the age of twenty-one years, out of the possession and against the will of her father or mother or of any other person having the lawful care or charge of her with intent to marry or carnally know her.

NOTE—Sub-section 2 of this section bars the person abducting or detaining, from taking any estate or interest, legal or equitable, in the real or personal property of the woman abducted or detained.

Sec. 315. Every one is guilty of an indictable offence and liable to five years' imprisonment who unlawfully takes or causes to be taken any unmarried girl, who is under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her.

2. It is immaterial whether the girl is taken with her own consent or at her own suggestion or not.

3. It is immaterial whether or not the offender believed the girl to be of or above the age of sixteen.

Sec. 294. It is no defence to a charge of indictment for any indecent assault on a young person under the age of fourteen years to prove that he or she consented to the act of indecency.

WHIPPING.

Sec. 1060. (4) Whipping shall not be inflicted on any female.

The following sub-section in regard to the first section of Chapter 55 of the Statutes of 1891, intituled "An Act Respecting Certain Female Offenders in the Province of Nova Scotia"—

2. The Judge, Stipendary Magistrate or Magistrate before whom such female person is convicted may, in his discretion, instead of sentencing her as in this section before provided, sentence her to an extended or substituted imprisonment in the said reformatory, subject to the following conditions:

(a) If such female person is under the age of twenty-one years, such extended imprisonment may be until she attains the age of twenty-one years or for any shorter or longer term not less than two nor more than four years.

(b) If such female person is of the age of twenty-one years or upwards, such extended imprisonment may be for any term not less than one year nor more than two years.

2. The provision of section twelve of this act hereby amended shall, mutatis mutandus, apply to such extended imprisonment of such female prisoners. (Note—Applies as to ticket-of-leave.)



CHAPTER XII.

Miscellaneous.

INSURANCE FOR WIFE'S CHILDREN

Formerly in all the Provinces insurance taken out for benefit of wife could not be alienated without the consent of wife. Recent legislation in Ontario, New Brunswick and Manitoba has made it possible for a man to do as he will with a policy taken out in favor of his wife.

MANITOBA.

Cap. 83 of R. S. M., 1902.

An Act Respecting Life Insurance for the Benefit of Wives and Children.

In cases of a policy of insurance heretofore or hereafter effected by man or woman on the face of it expressed to be for the benefit of, or has been heretofore or shall be hereafter appropriated under this act for the benefit of his wife or her husband or his wife and children or her husband and children or his or her father, mother, sisters or brothers or any one or more of them or any other person or persons whomsoever, then the insured may by an instrument in writing attached to or endorsed on the policy or identifying the same by its number or otherwise absolutely revoke the benefit or declaration or appropriation previously made and apportion the insurance money, or by like instrument from time to time reapportion the same, or alter or revoke the benefits, or add or substitute new beneficiaries, or divert the insurance money wholly or in part to himself or his estate, provided that the assured shall not alter or revoke or divert the benefit of any person who is beneficiary for value.

This Act shall be considered retroactive.

NATURALIZATION.

A person born in any part of the British Empire, even if an alien, is a British subject by right of birth, as also is he whose father or grandfather by the father's side is a British subject, although he be himself born in a foreign country; saving the exceptions resulting from special laws of the Empire.

The conditions prescribed by the laws of the Dominion for the naturalization of aliens are—

1. Residence in Canada during three years at least, or service during three years at least under the Government of Canada or under the Government of one of the Provinces of Canada,

with the intention when naturalized to either reside in Canada, or to serve under the Government of the Dominion or under the Government of one of the Provinces of Canada;

2. Taking the oath of residence or of service and that of allegiance required by law;

3. Procuring from the proper Court, with the necessary formalities, the certificate of naturalization required by law.

An alien woman is naturalized by the mere fact of the marriage she contracts with a British subject.

SEDUCTION—N. W. T. O. 1903, Cap. 8.

1. The father, or in case of his death, the mother (whether she remains a widow or remarries) of any unmarried female who has been seduced, and for whose seduction the father or mother could maintain an action in case such unmarried female, was at the time dwelling under his or her protection, may maintain an action for the seduction, notwithstanding such unmarried female was at the time of her seduction serving or residing with another person upon hire or otherwise.

2. Upon the trial of an action for seduction brought by the father or mother it shall not be necessary to prove any act of service performed by the party seduced, but the same shall in all cases be presumed and no evidence shall be received to the contrary; but in case the father or mother of the female seduced had before the seduction abandoned her and refused to provide for and retain her as an inmate then any other person who might by common law have maintained an action for the seduction may maintain such an action.

3. Any person other than the father or mother who by reason of the relation of master or otherwise would have been entitled at common law to maintain an action for the seduction of an unmarried female, may still maintain such action if the father or mother be not resident in the Territories at the time of the birth of the child which is born in consequence of the seduction, or being resident therein and does not bring an action for the seduction within six months from the birth of the child.

4. Notwithstanding anything in this Ordinance an action for seduction may be maintained by any unmarried female who has been seduced, in her own name, in the same manner as an action for any other act and in such action she shall be entitled to such damages as may be awarded.

SLANDER.—N. W. T., C. O., Chap. 30.

In an action of slander founded on words spoken of the plaintiff imputing unchastity, adultery or profligacy to a female whether married or unmarried, it shall not be necessary to allege or prove any special damage but such words shall be actionable *per se*.

NOTES.

The father, if living, to the exclusion of the mother, is heir to a man or woman dying intestate and leaving no widow nor issue or their representatives. N. W. T.

The father has sole authority in the education and disposal of the child although the mother is equally responsible with the father for the maintenance of the child. Quebec, C.C. 243, 165. (Also in other provinces).

The father's consent, to the exclusion of that of the mother, is only necessary for the marriage of their minor children.

The widow has dower (the use for life) of one-third or one-half of her husband's estate. The widower has the use of the whole for life in those provinces where dower and tenancy by the courtesy exist.

Illegitimate children inherit land equally with legitimate children of a woman dying intestate but do not taken any share in the land of a father dying intestate. N.W.T., B.C.

A man dying intestate leaving no children, half of personal estate goes to his wife. A woman dying intestate leaving no children all personal property goes to the husband. P.E.I.

In Quebec a man may procure a separation de corps because of wife's adultery. It is necessary before a woman can procure the same that her husband keep his concubine in their common habitation. C.C. 187, 189.

